

A dietary supplement could classify as a food taxed at the reduced rate of tax if it is not considered sold for immediate or on-site consumption after application of the criteria detailed in 86 Ill. Adm. Code 130.310. See 86 Ill. Adm. Code 130.310 (This is a GIL).

October 26, 2000

Dear Ms. Xxxxx:

This is in response to your letter dated August 15, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

As you may be aware, there have been recent changes in legislation in some states concerning the taxability of over-the-counter drugs and medicines that include vitamins, minerals, and sunburn prevention/treatment products. These legislative changes have made it necessary for COMPANY, to re-evaluate the taxability of some of our products. While we have researched your state's laws, we are writing to request clarification as to whether or not our specific products fall in taxable or non-taxable categories.

Please be assured that while we evaluate this issue, COMPANY has collected and remitted and continues to collect and remit sales tax for all products in question. The purpose of this correspondence is for informational purposes to ensure we are correctly charging tax to our customers.

The products for which we are seeking a Revenue Department ruling are:

XXXXXX Wafers
XXXXXX Metabolic Boosters
XXXXXX set

Enclosed you will find copies of the product labels with ingredient information. Please review these labels, and provide a written letter ruling declaring the taxability of each product.

Thank you for your assistance and attention to this matter. If you need further information, please feel free to contact me at ####, or by email at ####.

For your information and reference please find enclosed a copy of the Department's regulation on the reduced tax rate under the Retailers' Occupation Tax Act applicable to food, drugs, medicines and medical appliances, 86 Ill. Adm. Code 130.310. A 1% sales tax rate, plus any applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold (other than alcoholic beverages, soft drinks, and food which has been prepared for immediate consumption), drugs, medicines and medical appliances. Food that is prepared for immediate consumption and items that do not qualify as drugs, medicines and medical appliances are taxed at the regular state sales tax rate of 6.25%, plus any applicable local taxes.

The regulations define a food as "any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice". See Section 130.310(b)(1). For explanation of what is considered food prepared for immediate consumption please see Section 130.310(b)(6) of the enclosed regulation.

Taxation of food at the reduced rate depends on whether the food is prepared for immediate consumption or for consumption off the premises where sold, therefore, the nature of the premises in which the food is sold is also factor in determining the applicable sales tax rate. All sales by a retail establishment that provides facilities for on-premises consumption of food are subject to the high rate of tax unless sales of food not for immediate consumption are made through a separate means of collection, and the area where food not for immediate consumption is sold is physically partitioned from the area of food sold for immediate consumption. See, 86 Ill. Adm. Code 130.310(b)(2)(A) and (b)(3).

Where an establishment does not provide facilities for on-site consumption, the business would still charge a high rate of tax on all foods sales if a majority of the gross receipts resulted from food items sold in a state of preparation for immediate consumption, so as to be eaten without substantial delay after the final act of preparation by the retailer. However, where an establishment primarily sells food (over 50%) in bulk, such establishment will incur the reduced rate on all food items, except soft drinks, foods prepared for immediate consumption and alcoholic beverages.

Under the definitions of food provided in the regulations, the dietary supplements described in your letter could classify as food taxed at the reduced rate if they are not considered sold for immediate or on-site consumption after application of the criteria detailed in this letter and in 86 Ill. Adm. Code 130.310.

With regards to the dietary supplements you describe in your letter being sold in a set with other non-food items, the applicable tax would additionally depend upon whether the set was primarily made up of food items. If more than 50% of the value of a set, package or gift basket of items sold together is derived from food products eligible for the reduced rate of tax, then the set, package or gift basket is taxed at the reduced rate.

I hope this information has been helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk